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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,398	01/30/2002	Michael H. Schmitt	111225	4748

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EXAMINER

KUMAR, PREETI

ART UNIT PAPER NUMBER

1751

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/058,398

Applicant(s)

SCHMITT, MICHAEL H. 

Examiner

Preeti Kumar

Art Unit

1751

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

DETAILED ACTION

Advisory Action

1. Claims 1-26 and 29-38 are pending.
2. The Request for Reconsideration, filed November 6, 2003, will not be entered because Applicant's arguments are not persuasive. Applicants urge that The Office has merely stated a property of the fibers described in Cates, which indicates nothing regarding the properties of any finish thereon.

In response to applicant's argument that Cates et al. do not teach or suggest removing a water-insoluble finish from aramide fibers, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In the instant case, the teachings of Cates et al. disclose the treatment of a swelling agent to poly(m-phenyleneisophthalamide) fibers using a hydrophilic swelling agent to introduce other components to the fiber. Specifically Cates et al. teach that the swelling agent can be an organic polar solvent but warns that highly polar organic solvents are notorious for degrading mechanical properties of aramid-type fibers, possibly by dissolving or solvating the polymer. To accommodate for this potential concern, the swelling agent system selected, when used at the appropriate

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temperatures and under the usual processing conditions, will result in a dyed aromatic polyamide fiber or fabric exhibiting at least 80%, preferably at least 90% if not identical to the strength of either the greige T-455 fiber or fabric. See col.4. Furthermore, Examiner draws attention to the material limitation of the instant claim 1, which is a procedure comprising treating aramide fibers with an agent that comprises at least one hydrophilic fluid. The teachings of Cates et al. teach simultaneous dyeing and flame-resistant property improvement of poly(m-phenyleneisophthalamide) fibers using a hydrophilic swelling agent to introduce a dye and a fire retardant into the fiber.

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Preeti Kumar whose telephone number is 571-272-1320. The examiner can normally be reached on M-F 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra N. Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-872-9309.


YOGENDRA N. GUPTA
SUPERVISOR, PATENT EXAMINER
TECHNOLOGY CENTER 1750

Preeti Kumar
Examiner
Art Unit 1751

PK